

**CHRONOLOGY OF WATER LAW
IN THE STATE OF ARIZONA
PREPARED FOR THE TONOPAH
HICKMAN EGG & POULTRY FACILITY**

1864 Howell Code

The first Arizona Territorial Legislature adopts the Howell Code, which establishes the doctrine of prior appropriation for surface water – “First in Time, First in Right.”

1888 *Clough v. Wing*

The Arizona Territorial Supreme Court issues a decision recognizing the doctrine of prior appropriation as the means of allocating surface waters of the Territory, and stating that beneficial use is the limit of a water right.

1904 *Howard v. Perrin*

The Arizona Territorial Supreme Court ruling in this case (upheld in 1906 by the U.S. Supreme Court) recognizes a definite distinction, in character and ownership, between appropriable surface water and percolating groundwater. The court holds that percolating groundwater is the property of the overlying landowner and not subject to appropriation as surface water. The court further holds that subterranean streams flowing in natural channels between well-defined banks are subject to appropriation.

1926 *Pima Farms Company v. Proctor*

The Arizona Supreme Court holds that a junior appropriator of water from an underground stream flowing within defined channels may be enjoined from lowering the water levels in the senior appropriator’s wells because under the doctrine of prior appropriation, a junior appropriator may not render ineffective the prior appropriator’s means of diversion.

1931 *Maricopa Co. Municipal Water Conservation District v. Southwest Cotton Co.*

The Arizona Supreme Court holds that water seeping through a streambed or from lands under or immediately adjacent to a stream (referred to as “subflow”) is part of the surface stream and is therefore appropriable. The test of whether subsurface water is appropriable is whether drawing off of the subsurface water tends to diminish directly and appreciably the flow of the surface stream (“direct and appreciable test.”)

1938 First Groundwater Study Group

Governor Stanford appoints a group to study groundwater in response to growing concerns over increased groundwater pumping. The efforts of this group lead to the legislature appropriating monies to the U.S. Geological Survey to study and report on groundwater conditions in the state.

1945 Arizona’s first Groundwater Code is adopted

Holding Arizona to its claim that construction of the Central Arizona Project would reduce groundwater use instead of allowing for more groundwater use by agricultural users, the Bureau of Reclamation warns that the Central Arizona Project will not be approved without restrictions on groundwater use. In response, the legislature enacts a Groundwater Code, but the Code only requires the registration of wells throughout the State.

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1948 Critical Groundwater Code is adopted

Again, the federal government warns that the funding for the CAP will not be approved without a more meaningful Groundwater Code. The legislature responds by enacting the 1948 Code, which prohibits the drilling of new irrigation wells in ten designated Critical Groundwater Areas. However, the Code does nothing to regulate groundwater withdrawals from existing irrigation wells in those areas, thereby allowing groundwater pumping to continue at historic levels.

1952 *Bristor v. Cheatham I*

The Arizona Supreme Court holds that percolating groundwater is not owned by the owner of the overlying land but instead is subject to prior appropriation. This ruling reverses nearly 50 years of common law that had stated that percolating groundwater was not subject to prior appropriation.

1953 *Bristor v. Cheatham II*

The Arizona Supreme Court reverses its decision in *Bristor v. Cheatham I* (that groundwater is subject to the doctrine of prior appropriation) and instead adopts the American rule of reasonable use pertaining to groundwater. Under this rule, a landowner may withdraw groundwater for a reasonable and beneficial use on the land from which it is taken without liability for damages to surrounding landowners, but the withdrawal of groundwater for use away from the overlying land is subject to payment of damages to injured landowners.

1955 *Southwest Engineering Co. v. Ernst*

The Arizona Supreme Court upholds the provisions in the 1948 Groundwater Code restricting the drilling of new irrigation wells within Critical Groundwater Areas. The court rules that certain areas of the state may be managed differently, and that the additional restrictions placed on agricultural groundwater users by the 1948 Code are not in and of themselves unconstitutional.

1969 *Jarvis v. State Land Department I*

The Arizona Supreme Court affirms the superior court's issuance of an injunction prohibiting the City of Tucson from transporting groundwater to the City from wells in a Critical Groundwater Area outside the City. The court notes that the American rule of reasonable use provides that a person may not convey groundwater off the land if it will cause damage to other lands and further notes that this is a rule of property. The court finds that transporting groundwater away from a Critical Groundwater Area would necessarily cause damage to lands within the area and that an injunction is appropriate because damages would not adequately compensate the injured landowners.

1970 *Jarvis v. State Land Department II*

Relying on a surface water statute that gives preference to domestic and municipal uses over agricultural uses, the Arizona Supreme Court states that it will modify the injunction issued in *Jarvis v. State Land Department I* to allow the City of Tucson to acquire cultivated lands within the Critical Groundwater Area outside the City, retire the lands from irrigation and transport to the City for municipal use an amount of groundwater equal to the "annual historical maximum use" on the lands. The court later holds that "annual historical maximum use" means the *average* of the annual maximum amount of groundwater *consumptively* used on the land for irrigation purposes.

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1976 *Farmer's Investment Company (FICO) v. Bettwy*

The Arizona Supreme Court enjoins a mining company and the City of Tucson from transporting groundwater away from lands within a Critical Groundwater Area for use on lands outside the Critical Groundwater Area but within the same groundwater basin. The court holds that under the reasonable use doctrine, water may not be pumped from one parcel for use on another parcel if other lands will suffer injury or damage as a result, even though the two parcels overlie a common source of supply. The injunction is never enforced, however, as agricultural, mining and municipal interests soon begin negotiations on a legislative solution to groundwater transportation issues.

1977 Amendments to 1948 Groundwater Code

As a result of negotiations between agricultural, mining and municipal interests following the *FICO* decision, the legislature amends the 1948 Groundwater Code to allow all existing groundwater transportations to continue and to allow new or increased transportations under certain conditions. In most cases, groundwater transportation is subject to payment of damages to injured landowners, and injury is conclusively presumed if groundwater is transported away from a Critical Groundwater Area. Cities, towns, private water companies and irrigation districts are allowed to transport groundwater within their service areas without payment of damages. A 25-member Groundwater Study Commission is established and charged with developing a new Groundwater Code to address groundwater transportation and reduce groundwater overdraft occurring in parts of the state.

1980 Groundwater Management Act

Passed by the Arizona legislature on June 11, 1980 and signed into law by Governor Babbitt the next day, this Act implements the final recommendations of the Groundwater Study Commission. The Act establishes the Arizona Department of Water Resources to administer the provisions of the Act.

1991 Groundwater Transportation Act

The legislature amends the groundwater transportation laws to prohibit the transportation of groundwater from areas outside of Active Management Areas to Active Management Areas, with several exceptions. The exceptions allow certain entities to transport groundwater from the McMullen Valley groundwater basin to the Phoenix AMA, from the Big Chino sub-basin of the Verde River groundwater basin to the Prescott AMA, and from the Butler Valley groundwater basin and the Harquahala INA to any initial AMA.

1992 Water Exchange Legislation

The Arizona legislature enacts legislation authorizing water exchanges. A person participating in a water exchange must have the right to use the water given in the exchange and may use the water received in the exchange only in the same manner in which the person has the right to use the water given in the exchange, but the person need not have a right to use the water received in the exchange. Water exchanges involving surface water, other than Colorado River water require a permit from ADWR. Most other water exchanges require the filing of a notice with the ADWR.

1993 Restrictions on transporting groundwater outside of Active Management Areas

The legislature amends the groundwater transportation laws to prohibit most new transportations of groundwater between groundwater basins outside of Active Management Areas.

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Central Arizona Groundwater Replenishment District

The legislature amends the laws governing the CAP to provide that the District shall serve as a groundwater replenishment entity for member lands and member service areas within the District (Maricopa, Pinal and Pima Counties). The CAGRDR assists its members in obtaining determinations of assured water supply by agreeing to replenish groundwater used by a member in excess of the amount determined by ADWR to be consistent with the AMA's management goal.

2006 Phelps Dodge v. Arizona Department of Water Resources

The Arizona Court of Appeals holds that ADWR has authority to issue permits to appropriate water for instream flows, even though such an appropriation does not involve physical diversion of water.